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February 2, 2015

*Sent Via Email*

National Freedom of Information Officer  
U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, NW (2822T)  
Washington, DC 20460  
[hq.foia@epa.gov](mailto:hq.foia@epa.gov)

**Re: Freedom of Information Act Request Regarding Emissions Testing Reports / Data for Liquid Storage Tanks**

Dear FOIA Officer:

The Environmental Integrity Project (EIP), pursuant to the Freedom of Information Act ("FOIA"), 5 U.S.C. § 552 *et seq.*, and the Environmental Protection Agency's (EPA) FOIA regulations, 40 C.F.R. § 2.100 *et seq.*, respectfully requests any records that contain emissions testing reports or other emissions testing data for liquid storage tanks (tanks) in EPA's possession, including but not limited to:

- studies and data derived from testing performed by owners or operators of the tanks in compliance with a request from EPA pursuant to section 114 of the Clean Air Act, 42 U.S.C. § 7414;
- studies and data derived from testing performed by EPA personnel; and
- studies and data derived from testing commissioned or otherwise funded by EPA or other government agency.

EIP is a non-partisan, non-profit organization dedicated to the more effective enforcement of environmental laws and reducing exposure to toxic pollution. The requested records will enable EIP and the public to evaluate EPA's proposed position that it is not possible to determine if tank emissions estimation equations in AP-42 Chapter 7 need to be revised. The requested information will also improve the efficacy of our advocacy efforts to require industrial facilities that utilize tanks to more accurately report emissions and to support our ability to inform the public concerning such issues.

EIP also requests EPA to grant a fee waiver for this FOIA. As discussed in more detail below, a fee waiver is warranted because EIP intends to educate the general public and communities impacted by emissions from facilities that utilize tanks about how emissions from tanks are reported and EPA's proposed determination that it is not possible to determine if revising the emission factors for tanks is necessary. Finally, EIP as non-profit, does not have a commercial interest in the requested information.

## **I. Records Requested**

EIP is requesting any emissions testing reports or other emissions testing data for tanks in EPA's possession, including but not limited to:

- studies and data derived from testing performed by owners or operators of the tanks in compliance with a request from EPA pursuant to section 114 of the Clean Air Act, 42 U.S.C. § 7414;
- studies and data derived from testing performed by EPA personnel;
- studies and data derived from testing commissioned or otherwise funded by EPA or other government agency.

Examples of the requested records include:

- Eastmount Environmental Services, LLC, VOC and VOC HAP Emissions Testing from Residual Oil Tank No. 3 Tank Headspace and Loading Operations at Sprague's Searsport, Maine Terminal. Prepared for Sprague Operating Resources LLC. Searsport Terminal, Searsport Maine. October. Available at: [http://www.epa.gov/ttn/chief/consentdecree/Sprague\\_Oil.zip](http://www.epa.gov/ttn/chief/consentdecree/Sprague_Oil.zip)
- Eastmount Environmental Services, LLC, VOC and VOC HAP Emissions Testing from Asphalt Tank No. 9 Tank Headspace and Loading Operations at Global's South Portland, Maine Terminal. Prepared for Global Companies LLC. South Portland Terminal, South Portland Maine. November. Available at: [http://www.epa.gov/ttn/chief/consentdecree/Global\\_Asphalt.zip](http://www.epa.gov/ttn/chief/consentdecree/Global_Asphalt.zip)
- Eastmount Environmental Services, LLC, VOC and VOC HAP Emissions Testing from Asphalt Storage Tank No. 2 Tank Headspace and Loading Operations at Sprague's Searsport, Maine Terminal. Prepared for Sprague Operating Resources LLC. Searsport Terminal, Searsport Maine. July. Available at: [http://www.epa.gov/ttn/chief/consentdecree/Sprague\\_Asphalt.zip](http://www.epa.gov/ttn/chief/consentdecree/Sprague_Asphalt.zip)
- Eastmount Environmental Services, LLC, VOC and VOC HAP Emissions Testing Residual Oil Tank No. 3 Tank Headspace and Loading Operations at Global's South Portland, Maine Terminal. Prepared for Global Companies LLC. South Portland Terminal, South Portland Maine. August. Available at: [http://www.epa.gov/ttn/chief/consentdecree/Global\\_Oil.zip](http://www.epa.gov/ttn/chief/consentdecree/Global_Oil.zip)

The aforementioned reports are only provided as examples of the information and data EIP is seeking. Providing these examples is not intended to limit EIP's request to testing reports, but instead to facilitate EPA's search for records, emission testing reports or otherwise, that contain similar emission testing data for tanks.

EIP's request for emission testing data tanks in EPA's possession includes records held at the agency's headquarters and/or regional offices.

EIP asks that you respond to this request, in accordance with FOIA and EPA regulations, within twenty working days of the date the Freedom of Information Office receives and logs the request. This response, at the least, must "indicate within the relevant time period the scope of the documents [the agency] will produce and the exemptions [the agency] will claim with respect

to any withheld documents.” *Citizens for Responsibility and Ethics in Washington v. Fed. Election Comm’n*, 711 F.3d 180, 182-83 (D.C. Cir. 2013).

This request applies to agency files in any form, and also covers any non-identical duplicates of records that by reason of notation, attachment or other alteration or supplement, includes any information not in the original record.

## **II. Claims of Exemption from Disclosure**

If EPA claims exemption of any documents pursuant to 5 U.S.C. § 552(b), EIP requests that the agency identify the exempt record in writing with a brief description of the record and an explanation as to the justification for the exemption. Through a *Vaughn* Index, the agency’s explanation should provide the detailed justification, specificity, separation, and indexing set forth in *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), and related proceedings. If a document contains both exempt and non-exempt information, please provide those portions of the document that are not exempted from disclosure. If a document does not exist, please so indicate in the written response.

## **III. Fee Waiver Request**

EIP respectfully requests a fee waiver for this information request. FOIA requires a waiver of or reduction in fees for document search, duplication, and review when “disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester.” 5 U.S.C. § 552(a)(4)(A)(iii). EPA’s FOIA implementing regulations mirror the above-cited statutory language regarding fee waivers. 40 C.F.R. § 2.107(l). Pursuant to guidance from the U.S. Department of Justice, an agency must evaluate six separate factors to assess if the request is in (A) the public interest and (B) not for a commercial interest. EPA has codified this guidance at 40 C.F.R. §§ 2.107(l)(2)-(3).

### **A. The Environmental Integrity Project’s FOIA request is in the public interest.**

EIP’s FOIA request is in the public interest because it “is likely to contribute significantly to public understanding of the operations or activities of the government.” 40 C.F.R. § 2.107(l)(1). EIP’s request satisfies the four criteria of the public interest prong because it: (1) concerns the “operations or activities of the government,” (2) will “likely to contribute” to an understanding of government operations and activities, (3) will contribute to “public understanding,” and (4) will likely contribute “significantly” to public understanding of government activities or operations. As explained below, EIP’s request satisfies each of these criteria and is in the public interest.

#### **1. The request concerns “the operations or activities of the government.”**

EIP’s request for records containing emissions test data for tanks in EPA’s possession concerns the operations or activities of the government because they relate to emissions data collected or obtained by the government that can inform EPA’s proposed determination that revision of the emission factors for tanks is not warranted pursuant to Section 130 of the Clean Air Act. A fee waiver can only be granted if the subject of the requested records concern identifiable operations or activities of the Federal Government, with a connection that is direct

and clear, not remote. *See* 40 C.F.R. § 2.107(l)(2)(i). EIP's request for records containing emissions test data for tanks is directly connected to EPA's implementation of the Clean Air Act, the agency's determination that revision of the emission factors for tanks is not warranted, and any agency efforts to reduce emissions from tanks. Because EPA is an independent agency of the Federal Government, and EIP's requests concerns EPA's regulatory activities, the request satisfies this requirement for a fee waiver.

**2. The disclosure is "likely to contribute" to an understanding of government operations and activities.**

Disclosure of records containing emissions test data for tanks will contribute to an understanding of the EPA's determination that revision of the emission factor for tanks is not warranted and will be meaningfully informative about government operations or activities. *See* 40 C.F.R. § 2.107(l)(2)(ii). The records EIP seeks are not already available in the public domain. Also, the requested records will provide unique information that will enable EIP and the public to evaluate EPA's determination that revision of the emission factors for tanks is not warranted. Therefore, EIP's request satisfies this factor EPA's fee waiver analysis.

**3. The disclosure will contribute to "public understanding."**

EIP intends to disseminate the information it obtains from this FOIA request to a broad public audience, through discussion with communities impacted by facilities that utilize tanks, including refineries, natural gas facilities, chemical plants, oil terminals, and tank farms. Under EPA's regulations, a requester is entitled to fee waiver if the disclosure will contribute to an understanding of the public by a reasonably broad group of persons interested in the subject. *See* 40 C.F.R. § 2.107(l)(2)(iii). EIP is a non-profit, non-partisan public interest law organization that was founded to advocate for the effective enforcement of environmental laws that pertain to large sources of pollution including refineries, chemical plants, natural gas facilities, oil terminals, and tank farms. EIP's three objectives are to: (1) provide objective analysis of how the failure to enforce or implement environmental laws increases pollution and affects public health; (2) hold federal and state agencies, as well as individual corporations, accountable for failing to enforce or comply with environmental laws; and (3) help local communities obtain the protection of environmental laws. EIP participates in public outreach and advocacy, commenting opportunities, and rulemaking proceedings. Through its mission and experience, EIP has expertise on tanks and the industrial facilities that utilize this equipment, including refineries, chemical plants, tank farms, oil terminals and natural gas facilities and disclosing these records to EIP will enable EIP to further educate the public about the accuracy of EPA's emission factors for tanks. Furthermore, EIP has the ability and intention to convey this information to the public.

**4. The disclosure is likely to contribute "significantly" to public understanding of government operations or activities.**

Disclosure of the requested records will significantly contribute to the public understanding of EPA's regulatory framework for petroleum refineries. A fee waiver is only available to requesters seeking the disclosure of records that will significantly enhance public understanding of government operations or activities. *See* 40 C.F.R. § 2.107(l)(2)(iv). Currently, there is very limited information available about emission testing data for tanks. Also,

EPA recently proposed not to revise the emission factors for tanks and is justifying its proposal, in part, because there insufficient data on tank emissions. Disclosure of these records will significantly improve public understanding of EPA's stated justifications for its recent determination not to revise emission factors for tanks.

**B. EIP Does not Have a Commercial Interest in the Requested Disclosure**

In addition to satisfying the public interest factor, a FOIA requester seeking a fee waiver must demonstrate their purpose "is not primarily in the commercial interest of the requester." 40 C.F.R. § 2.107(l)(1). EPA's regulations identify two factors to determine if a FOIA requester does not have a commercial interest in the requested records:

**1. The requester does not have a commercial interest that would be furthered by the requested disclosure.**

EIP does not have a commercial interest in the requested Storage Tank Emission Studies. *See* 40 C.F.R. § 2.107(l)(3)(i). Further, this is not a "[c]ommercial use request" because EIP has no commercial, trade, or profit interests in the information. 40 C.F.R. § 2.107(b)(1). The requester is a non-profit, public interest law organization. EIP seeks to use the emission test data for tanks to inform the public and decision-makers, and to support advocacy efforts to ensure that emissions from tanks are accurately reported to EPA and state regulators.

**2. The disclosure is not "primarily in the commercial interest of the requester."**

This FOIA request does not pertain to any relevant commercial interest. Thus, this request is entirely in the public interest. *See* 40 C.F.R. § 2.107(l)(3)(ii).

For the foregoing reasons, a fee waiver is warranted for this request.

EIP looks forward to your determination with regard to this FOIA request by March 3, 2015. Please contact Sparsh Khandeshi at the email address or telephone number below with any questions about this request. Thank you for your attention to this matter.

Sincerely,

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